

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 00-0190****Use Tax****For Tax Years 1997 through 1998**

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**ISSUES****I. Sales Tax—Studio Rental**

**Authority:** 45 IAC 2.2-4-8; 45 IAC 2.2-4-9

Taxpayer protests imposition of sales tax on rental of studio space.

**STATEMENT OF FACTS**

Taxpayer operated a music store, which included studio space for music lessons. The music teachers were not employees of the store. The teachers rented the studio space from the store. The Department of Revenue ("Department") issued proposed assessments on the basis that the studios were rented on an hourly basis. Taxpayer believes that the studios were rented on a monthly basis. Further facts will be supplied as required.

**I. Sales Tax—Studio Rental****DISCUSSION**

Taxpayer operated a music store and rented studio space to independent music teachers. The teachers paid taxpayer twenty-five percent (25%) of the lesson fee as rent. Taxpayer believes that, since the teachers and taxpayer had no lease or contract governing the rental of the studio space, the teachers rented the studio space on an indefinite basis. Taxpayer considered the rentals to be for longer than thirty (30) days and therefore not taxable.

45 IAC 2.2-4-8 explains in part:

- (a) For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than 30 (thirty) days any accommodation including booths, display spaces and banquet facilities, in

any place where accommodations are regularly furnished for a consideration is a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income from retail unitary transactions.

- (b) In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax.

Taxpayer refers to 45 IAC 2.2-4-9, which states:

- (a) For purposes of the state gross retail and use tax, an “accommodation” is any space, facility, structure, or combination thereof including booths, display spaces and banquet facilities, together with all associated personal or real property (including land), which is intended for occupancy by human beings for a period less than thirty (30) days including:
  - (1) Rooms in hotels, motels, lodges, ranches, villas, apartments or houses.
  - (2) Gymnasiums, coliseums, banquet halls, ballrooms, or arenas, and other similar accommodations regularly [*sic.*] offered for rent.
  - (3) Cabins or cottages.
  - (4) Tents or trailers (when situated in place).
  - (5) Spaces in camper parks and trailer parks wherein spaces are regularly offered for rent for periods of less than thirty (30) days.
  - (6) Rooms used for banquets, weddings, meetings, sales displays, conventions or exhibits.
  - (7) Booths or display spaces in a building, coliseum or hall.
- (b) The tax does not apply to rental of meeting rooms to charitable or other exempt organizations to be used in the furtherance of the purpose for which they are granted exemption.

—EXAMPLE—

If a person moves into a room for an indefinite period, but pays weekly, sales tax must be collected until a person has rented the room for longer than 30 consecutive days.

Taxpayer believes that the teachers rented the studios for longer than thirty consecutive days and therefore 45 IAC 2.2-4-9 provides that the rentals were not subject to sales tax. Taxpayer submitted documentation to support its protest. This documentation explains that the teachers were considered to be private contractors, and had exclusive use of the studios during store hours and were allowed to keep personal items such as music and equipment in the studio, but that the store would not be responsible for it in any way. Taxpayer did not establish that any teachers did keep personal items in the studios. The documentation also shows that the teachers did not rent the studios for thirty consecutive days, but rather paid by the hour. Taxpayer believes that the

absence of written contracts results in an indefinite period of rental, and so sales tax would only be collected for the first thirty days of the audit period.

The Department does not agree with this analysis. Unlike the example provided in 45 IAC 2.2-4-9, the teachers did not move into the studios for an indefinite period. Taxpayer's documentation establishes that none of the teachers rented the studios for thirty consecutive days. The documentation also shows that the teachers paid for the actual time they were in the studio, but they did not pay for the privilege of storing equipment in the studios. The teachers rented the studios for a definite period (hourly), and therefore are taxable under 45 IAC 2.2-4-8(a).

### **FINDING**

Taxpayer's protest is denied.

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